



State of Washington PUBLIC DISCLOSURE COMMISSION

711 Capitol Way Rm. 206, PO Box 40908 • Olympia, Washington 98504-0908 • (360) 753-1111 • FAX (360) 753-1112
Toll Free 1-877-601-2828 • E-mail: pdcc@pdcc.wa.gov • Website: www.pdca.wa.gov

TO: Members, Public Disclosure Commission

FROM: Vicki Rippie, Executive Director

DATE: March 7, 2006

SUBJECT: Draft Revisions to WAC 390-05-210, Definition – Contribution, and
WAC 390-18-010, Political Advertising, Electioneering
Communications and Independent Expenditures

Previously, the Commission approved proposed rule language implementing ESSB 5034, including WACs 390-05-210 and 390-18-010. While preparing these two rules for filing with the Code Reviser, I noticed a few subsections that need further attention. Since proposed rules have to be submitted exactly as approved by the Commission, I am asking that you consider making the modest changes described below.

WAC 390-05-210 Definition – Contribution

This rule helps distinguish between a “contribution” and an “independent expenditure” or “electioneering communication.” Both independent expenditures and electioneering communications contemplate an “arm’s length” distance between the person making the expense and the candidate or committee benefited. This rule tells the spender what kinds of arrangements or circumstances give rise to an expense being considered a contribution.

In January, the Commission approved draft changes to subsection (3) of this rule and directed staff to make comparable changes to subsections (4), (5) and (6).

As initially presented and approved, subsection (3)(a) includes misplaced new language. It also can be simplified.

The approved language reads as follows:

(a) Any arrangement, coordination or direction by the candidate, the candidate's authorized committee or agent is given to the expending person prior to the publication, distribution, display or broadcast of (i) political advertising or prior to an expenditure being made by that person supporting that candidate or opposing one or more of that candidate's opponents, or (ii) electioneering communications identifying that candidate or one or more of that candidate's opponents; or

I recommend the Commission modify this draft amendment so that it reads:

(a) Any arrangement, coordination or direction by the candidate, the candidate's authorized committee or agent is given to the expending person prior to the publication, distribution, display or broadcast of political advertising or electioneering communications or prior to an expenditure being made by that person supporting that candidate or opposing one or more of that candidate's opponents; or

This revision would be made in subsections (3), (4), (5) and (6). In addition, I am asking that subsection (4)(c) be changed to reference "the caucus political committee" and subsection (5)(c) be modified to reference "the bona fide political party."

This rule, with all of the draft amendments highlighted in yellow, can be found beginning on page three of this memo.

WAC 390-18-010 Political Advertising, Electioneering Communications & Independent Expenditures

This recommended change adds the word "advertising" to the rule heading and makes the rule applicable throughout the law and the Commission's rules as needed.

The approved language reads as follows:

WAC 390-18-010 Political advertising, electioneering communications and independent expenditures -- Identification of sponsor. (1) For the purposes of RCW 42.17.510 and this rule,

The recommended language is:

WAC 390-18-010 Advertising, ((P))political advertising, electioneering communications and independent expenditures -- Identification of sponsor. (1) For the purposes of chapter 42.17 RCW ((42.17.510)) and ((this rule)) title 390 WAC,

A copy of the rule, as amended by this staff recommendation, can be found on page 5.

DRAFT AMENDMENT:

WAC 390-05-210 Definition — Contribution (1) The term "contribution" as defined in RCW 42.17.020 shall be deemed to include, among other things, furnishing services or property or rights on a discriminatory basis or at less than their fair market value as defined in WAC 390-05-235, for the purpose of assisting any candidate or political committee. When such in-kind contribution of goods or services is provided, it shall be reported at its fair market value ~~((;))~~ per WAC 390-05-235 and, pursuant to RCW 42.17.640, the fair market value is the amount of the contribution to be allocated to the contributor in determining compliance with the contributor's contribution limit.

(2) **Duplicating political advertising.** The financing by a person of the dissemination, distribution, or republication, in whole or in part, of broadcast, written, graphic, or other form of political advertising prepared by a candidate, a political committee, or the authorized agent of a candidate or political committee is a contribution to the candidate or political committee.

(3) **Consulting with a state, local or judicial candidate.** An expenditure made by a person in cooperation, consultation, concert or collaboration with, or at the request or suggestion of a candidate, the candidate's authorized committee or agent is a contribution to such candidate. An expenditure is presumed to be made in cooperation, consultation, concert or collaboration with, or at the request or suggestion of a candidate, the candidate's authorized committee or agent when:

(a) Any arrangement, coordination or direction by the candidate, the candidate's authorized committee or agent is given to the expending person prior to the publication, distribution, display or broadcast of political advertising or electioneering communications or prior to an expenditure being made by that person supporting that candidate or opposing one or more of that candidate's opponents; or

(b) An expenditure is made based on information about the candidate's plans, projects or needs provided to the expending person by the candidate, the candidate's authorized committee or agent with a view toward having an expenditure made; or

(c) An expenditure is made by, through, ~~((or))~~ in consultation with, or with the assistance of, including the fundraising assistance of, any person who, during the ~~((current election cycle))~~ twelve months preceding the expenditure, ~~((i) is or has been authorized to raise or spend over \$500 per election on behalf of the candidate, or (ii))~~ is or has been an officer of the candidate's authorized committee; or

(d) The expenditure is made by or in consultation with any person who, during the ~~((current election cycle))~~ twelve months preceding the expenditure, is or has been receiving any form of campaign-related compensation or reimbursement from the candidate, the candidate's authorized committee or agent.

(4) **Consulting with a caucus political committee.** An expenditure, that does not qualify as a contribution to a candidate under subsection (3) of this section, made by a person in cooperation, consultation, concert or collaboration with, or at the request or suggestion of a caucus political committee or its agent is a contribution to such caucus political committee. An expenditure is presumed to be made in cooperation, consultation, concert or collaboration with, or at the request or suggestion of a caucus political committee or its agent when:

(a) Any arrangement, coordination or direction by the caucus political committee, its agent or another political committee financed, controlled or operated by the caucus is given to the expending person prior to the publication, distribution, display or broadcast of political advertising or electioneering communications or prior to an expenditure being made by that person supporting that caucus political committee or one or more of the candidates supported by it or opposing one or more of those candidates' opponents; or

(b) An expenditure is made based on information about the caucus political committee's plans, projects or needs provided to the expending person by the caucus political committee, its agent or another political committee financed, controlled or operated by the caucus with a view toward having an expenditure made; or

(c) An expenditure is made by, through, ~~((or))~~ in consultation with, or with the assistance of, including the fundraising assistance of, any person who, during the ~~((current election cycle))~~ twelve months preceding the expenditure, ~~((i) is or has been authorized to raise or spend over \$500 per year on behalf of the caucus political committee, or (ii))~~ is or has been an officer of

~~the caucus political committee or~~ another political committee financed, controlled or operated by the caucus; or

(d) The expenditure is made by or in consultation with any person who, during the ~~((current election cycle))~~ **twelve months preceding the expenditure**, is or has been receiving any form of campaign-related compensation or reimbursement from the caucus political committee, its agent or another political committee financed, controlled or operated by the caucus.

(5) ***Consulting with a bona fide political party.*** An expenditure, that does not qualify as an contribution to a candidate under subsection (3) of this section, made by a person in cooperation, consultation, concert or collaboration with, or at the request or suggestion of a bona fide political party or its agent is a contribution to such bona fide political party. An expenditure is presumed to be made in cooperation, consultation, concert or collaboration with, or at the request or suggestion of a bona fide political party when:

(a) Any arrangement, coordination or direction by the bona fide political party, its agent or a political committee financed, controlled or operated by the party is given to the expending person prior to the publication, distribution, display or broadcast of political advertising ~~or electioneering communications~~ or prior to an expenditure being made by that person supporting that bona fide political party or one or more of the candidates supported by it or opposing one or more of those candidates' opponents; or

(b) An expenditure is made based on information about the bona fide political party's plans, projects or needs provided to the expending person by the bona fide political party or its agent with a view toward having an expenditure made; or

(c) An expenditure is made by, through, ~~((or))~~ in consultation with, ~~or with the assistance of, including the fundraising assistance of,~~ any person who, during the ~~((current election cycle))~~ **twelve months preceding the expenditure**, ~~((i) is or has been authorized to raise or spend over \$2,500 per year in nonexempt funds on behalf of the bona fide political party, or (ii))~~ is or has been an officer of ~~the bona fide political party or~~ a political committee financed, controlled or operated by the bona fide political party; or

(d) The expenditure is made by or in consultation with any person who, during the ~~((current election cycle))~~ **twelve months preceding the expenditure**, is or has been receiving any form of campaign-related compensation or reimbursement from the bona fide political party, its agent or a political committee financed, controlled or operated by the bona fide political party.

(6) ***Consulting with other political committees.*** An expenditure made by a person in cooperation, consultation, concert or collaboration with, or at the request or suggestion of a political committee is a contribution to such political committee. An expenditure is presumed to be made in cooperation, consultation, concert or collaboration with, or at the request or suggestion of a political committee when:

(a) Any arrangement, coordination or direction by the political committee, its agent or another political committee financed, controlled or operated by the committee is given to the expending person prior to the publication, distribution, display or broadcast of political advertising or prior to an expenditure being made by that person ~~((supporting))~~ **benefiting** that political committee; or

(b) An expenditure is made based on information about the political committee's plans, projects or needs provided to the expending person by the political committee or its agent with a view toward having an expenditure made; or

(c) An expenditure is made by, through, ~~((or))~~ in consultation with, ~~or with the assistance of, including the fundraising assistance of,~~ any person who, during the ~~((current election cycle))~~ **twelve months preceding the expenditure**, ~~((i) is or has been authorized to raise or spend over \$5,000 on behalf of the political committee or another political committee financed, controlled or operated by the committee, or (ii))~~ is or has been an officer of the political committee or another political committee financed, controlled or operated by the committee; or

(d) An expenditure is made by or in consultation with any person who, during the ~~((current election cycle))~~ **twelve months preceding the expenditure**, is or has been receiving any form of campaign-related compensation or reimbursement from the political committee, its agent or another political committee financed, controlled or operated by the committee.

DRAFT AMENDMENT:

WAC 390-18-010 Advertising, ~~((P))~~political advertising, electioneering communications and independent expenditures -- Identification of sponsor. (1) For the purposes of chapter 42.17 RCW ((42.17.510)) and ((this rule)) title 390 WAC,

(a) "Sponsor of an electioneering communication, independent expenditure or political advertising" means the candidate, political committee or other person paying for the advertising is defined at RCW 42.17.020. If a person acts as an agent for another or is reimbursed by another for the payment, the original source of the payment is the sponsor.

(b) Unless the context clearly provides otherwise, "advertising" or "advertisement" means political advertising, electioneering communications, or independent expenditures that are for political advertising and/or electioneering communications subject to the provisions of RCW 42.17 and as defined in RCW 42.17.020 or RCW 42.17.100.

(2) With advertising for which no payment is demanded or for which a cost is not readily ascertainable, the sponsor is the candidate, political committee or person who solicits or arranges for the advertising to be displayed or broadcast.

(3) If more than one person sponsors specific advertising the identity of each sponsor must be shown. However, if a person contributes in cash or in-kind to a candidate or political committee to assist in paying the cost of advertising, ~~((it is unnecessary to include that contributor's name as))~~ that person is not deemed a sponsor provided the contribution is reported in accordance with applicable provisions of chapters 42.17 RCW and 390 WAC.

(4) Printed advertising shall clearly state, in an area set apart from any other printed matter, that it has been paid for by the sponsor (Example: (1) Paid for by the XYZ committee, mailing address, city, state, zip code; (2) Vote for John Doe, paid for by John Doe, mailing address, city, state, zip code). However, printed advertising undertaken as an independent expenditure ~~((as defined in RCW 42.17.020))~~ or electioneering communication shall comply with the "Notice to Voters" and, if relevant, the "Top Five Contributors" provisions of RCW 42.17.510 and provide this information in an area set apart from any other printed matter. Political committees, other than a bona fide political party, that sponsor independent expenditure or electioneering communication printed advertising are required to provide the "Top Five Contributors" to that political committee pursuant to WAC 390-18-025; however, this requirement does not apply to bona fide political parties sponsoring independent expenditures.

(5)(a) ~~Political~~ Advertising consisting of more than one page but intended to be presented as a single item (i.e. 3-page letter with return envelope) must identify the sponsor on the first page or fold of the advertising. Identification on an enclosed return envelope or the envelope in which the advertising is sent is not sufficient.

(b) ~~Political~~ Advertising which is a collection of several items relating to more than one candidate or committee and distributed simultaneously must show the respective sponsor on the respective items.

(6) The name of the sponsor of all radio or television ~~political~~ advertising shall be clearly spoken or identified as required in RCW 42.17.510.

(a) However, aAll radio, telephone and television political advertising undertaken as an independent expenditure as defined in RCW 42.17.020 shall comply with the "Notice to Voters" and, if relevant, the "Top Five Contributors" provisions of RCW 42.17.510 and this information shall be clearly spoken or identified as provided in RCW 42.17.510.

(b) All radio and television advertising undertaken as an electioneering communication as defined in RCW 42.17.020 shall comply with the "Notice to Voters" and, if relevant, the "Top Five Contributors" provisions of RCW 42.17.510 and this information shall be clearly spoken or identified as provided in RCW 42.17.510.

(c) Political committees, other than a bona fide political party, that sponsor independent expenditure or electioneering communication radio and television political advertising are required to clearly speak or otherwise identify the "Top Five Contributors" to that political committee pursuant to WAC 390-18-025; however, this requirement does not apply to bona fide political parties sponsoring independent expenditures.